

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

NATHAN SANCHEZ, *et al.*,

Plaintiffs,

v.

Case No. 14-cv-926 MV/GBW

RODOLFO CANO-MARQUEZ, *et al.*,

Defendants.

ORDER TO SHOW CAUSE

THIS MATTER is before the Court on review of the record. Plaintiffs filed suit against Defendants Safeco Insurance Company of America ("Safeco"), Mike Schlagel, and Rodolfo Cano-Marquez in state court on August 4, 2014. *Doc. 1*, Ex. D. Defendant Safeco removed this case to federal court on October 15, 2014. *Doc. 1*.

On November 13, 2014, Plaintiffs filed a Motion for Remand to State Court and for an Award of Attorneys' Fees and Costs. *Doc. 9*. The undersigned entered Proposed Findings and Recommended Disposition (PFRD) on April 20, 2015, recommending that the Court deny the Motion for Remand. *Doc. 19*. In the PFRD, the undersigned further noted that Defendant Schlagel had never been served (*doc. 19* at 2), and concluded that Defendant Cano-Marquez was never properly served (*doc. 19* at 3-6). No objections were filed and the Court adopted the PFRD its entirety on May 21, 2015. *Doc. 20*. There

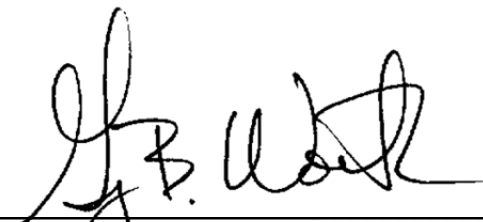
is no indication in the record that Plaintiffs have since effected service on either defendant.

Federal Rule of Civil Procedure 4(m) provides, in relevant part:

If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

In removed cases, the time for tolling the 120-day period begins upon the date of removal. *See* 28 U.S.C. § 1448. More than 120 days have elapsed since this action was removed to district court. Plaintiffs are therefore directed to show cause why their claims against Defendants Schlagel and Cano-Marquez should not be dismissed without prejudice for failure to comply with the service and time provisions of Rule 4(m). Plaintiffs shall file a response to the Court's Order to Show Cause by no later than **June 19, 2014**.

IT IS SO ORDERED.



GREGORY B. WORMUTH
UNITED STATES MAGISTRATE JUDGE